



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,726	02/09/2004	Shirley Dusenberry	209.01-P-USA	3406
30040	7590	04/07/2005	EXAMINER	
MICHAEL A. SHIPPEY, PH. D. 4848 LAKEVIEW AVENUE SUITE B YORBA LINDA, CA 92886			LE, TAN	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,726

Applicant(s)

DUSENBERRY, SHIRLEY

Examiner

Tan Le

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

1. This is the second office action for serial number 10/755,726. This application contains claims numbered 1-10. Claims 11-20 have been canceled by the amendment filed 1/4/05.

2. Currently, claims 11-20 have been canceled but the text still remained in the claims. A claim being canceled must be listed in the claim listing with the status identifier "canceled"; the text of the claim must not be presented. Appropriate correction is required.

3. Claim 2 recites "means for attachment are comprised of", examiner proposes it should be changed to -- attaching means comprises --.

Claim 1, recites "a drinking glass" (line 10) should be changed to -- the (or said) drinking glass-- .

Claims 2-4, "said holder" (all in line 2), examiner proposes to change to --said container--.

Claim 6, "said holder" line 1, should also be changed to -- said container --

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are repeatedly rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the upper edge" (in line 4). There is insufficient antecedent basis for this limitation in the claim. See also claim 3, line 3.

Claims 4 and 6, each recites the limitation "the top surface" (both in line 2). There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the neck " in 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the phrase "wherein said holding means comprise at least one downwardly extending member forming a hanging means to hang said container over said upper edge of a drinking glass". This is confusing. Examiner suggests the phrase "wherein said holding means" should be changed to -- wherein said attaching means -- to be properly recited the intended use of each limitation.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,381,623 to Koistinen.

As to claims 1-4, Koistinen teaches a water funnel and card holder (Figs. 1-2) comprising: a small, lightweight, open top container (12) capable of containing water; attachment means (22) capable of attaching the container to an edge of a thin walled vessel or glass in a stable upright position; and a holding means (20, 30, 32) capable of holding a card in an upright position on the container; the attachment means comprising

Art Unit: 3632

at least one downwardly extending member forming a hanging means (22) and a tab (24) fixedly attached to a side of the container and extending outwardly (36) and downwardly (22) in an inverted J-shape; the tab being permanently or removably attached to the outside of the holder; the holding means also comprising a plurality of tabs (32, 30, 28) arisen vertically from a top surface of the holder.

As to claim 5, the drinking glass is not a positive part of the claim. Therefore, this claim limitation is also met by Koistinen.

As to claims 6 and 10, Koistiment also teaches the container being constructed in the shape of a flower with a top surface curving horizontally outward in the manner of petals of a flower.

As to claim 7, Koistimen also teaches the holder/container being capable of containing water without leakage and the holder being formed of plastic.

As to claims 8-9, these claimed limitations are also taught by Koistimen as evidently shown on Fig. 3

Claims 1-3, 5 and 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,825,590 to Cullinane.

As to claims 1-3, Cullinane teaches a receptacle hanger (Fig. 1 or Fig.9) comprising a small, lightweight, open top container (10, 20); attachment means (14) and a holding means (44, 48) capable of holding a card in an upright position on the container; the attachment means comprising of a tab (44) fixedly attached to a side of

Art Unit: 3632

the holder and extending outwardly and downwardly in an inverted J-shape; the tab can be permanently or removably attached to the outside of the holder.

As to claim 5, the drinking glass is not a positive part of the claim. Therefore, this claimed limitation is also met by Cullinane.

As to claims 7 and 10, the holder of Cullinane is also capable of containing water without leakage and the holder comprises of plastic (58).

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cullinane in view of US Patent No. 5,088,216 to Wasilko.

Cullinane teaches the claimed invention substantially as claimed as discussed above except for a circular grid capable of residing in a horizontal position within a neck of the container.

Wasilko teaches a circular grid (200) capable of residing in a horizontal position within the container for supporting one or more flowers or flower buds via insertion of the stems of flowers or buds into the grid.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a circular grid of Wasilko into the container of Cullinane for the desired purpose of providing better holding flowers via insertion of the stems of the flowers or buds into the grid while can hang the holder onto the drinking vessel.

Response to Arguments

7. Applicant's arguments filed 01/04/05 have been fully considered but they are not persuasive.

Applicant's argument with respect to Koistinen and Cullinane as presented on pages 5-7 of the Remarks have been fully considered but they are not persuasive. Examiner respectfully contends that Koistinen, and Cullinane clearly show all the limitations as pointed out in the office action. It should be noted that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Applicant also argues that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., paragraphs 2, 5 on page 5 or paragraph 2 on page 6 of the Remarks) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (703) 305-8244 (old) or (571) 272-6818 (new) (starting from 4/8/05). The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on (703) 308-2156 (old) or (572) 272-6815 (new) (starting from 4/8/05). The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3632

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tan le
Patent examiner
March 28, 2005.



RAMON O. RAMIREZ
PRIMARY EXAMINER